S.B.CIVIL CONTEMPT PETITION NO.13/2006

Sohan Lal Singaria
vs.
Virendra Singh Rathore.

DATE OF ORDER ::: 8.5.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. KS Rathore, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner submitted a private complaint in the Court of Additional Chief Judicial Magistrate, Jaitaran, District Pali under Section 190(1)(a) CrPC read with Section 3(2)(i) of SC/ST (Prevention of Attrocities) Act, 1989 and under Sections 195, 196, 197, 198, 342, 344 read with Section 120B IPC against 10 accused persons. The learned Magistrate forwarded the matter to the concerned police station for investigation under Section 156(3) CrPC.

The concerned SHO submitted an application before the learned Magistrate on 21.3.2006 wherein the concerned SHO after narrating the facts of the case and the case filed by the rival parties, requested the Court to reconsider the matter in the light of the facts disclosed by the concerned SHO.

Learned counsel for the petitioner vehemently submitted that the Additional Chief Judicial Magistrate specifically

directed the S.H.O. to register the case (register the F.I.R.) and investigate the matter but the concerned S.H.O. did not investigate the matter rather say the concerned S.H.O. did not even register the F.I.R. which he should have done and he had no option. It is also submitted that on no ground, the S.H.O. could have refused to register the F.I.R. and could have refused to investigate into the matter. It is also submitted that the reasons given in the application clearly demonstrate that none of the grounds exist for his refusal to obey the court's order, therefore, the concerned S.H.O. has committed contempt of subordinate court, subject to this Court.

I have considered the submissions of learned counsel for the petitioner and perused facts of the case as well as application submitted by the concerned S.H.O.

How a private complaint can be dealt with is provided in Code of Criminal Procedure. The Court may on private complaint take cognizance or without taking cognizance may forward it to the police station under Section 156(3) CrPC. The Court has forwarded the matter to the concerned police station for investigation. It appears from the facts which are not in dispute that the rival party also initiated criminal proceedings against the petitioner and the concerned S.H.O. by giving facts in his application requested the court below to reconsider the matter.

According to learned counsel for the petitioner even the power to review is not with the trial court while

exercising the powers under CrPC. Be it as it may be, the Court has fixed the application for consideration and orders on 19.4.2006. The trial court has not passed any order on the application of S.H.O. Even if the said application is accepted or rejected, that will be a judicial order and that order can only be passed under CrPC by the trial court. At this stage, mere moving an application by the concerned SHO to the concerned Court requesting to reconsider the matter cannot be said to be a willful disobedience of the court's order because of the reason that even if the concerned S.H.O. is wrong in his opinion of moving application before the concerned court for recalling of the order, even then that cannot amount to disobedience of the court's order. Otherwise also, the effective remedy is by giving opportunity to the Court to pass appropriate order on the application and thereafter if order goes against the petitioner, he can challenge the same in appropriate proceedings.

In view of the above, I do not find any merit in the contempt petition and accordingly, the same is hereby dismissed.

However, it is observed that the concerned court may decide the application of S.H.O., Police Station, Jaitaran, District Pali expeditiously as early as possible.

(PRAKASH TATIA), J.

S.Phophaliya